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Court of Appeals of Kentucky.

ANN SPRATLEY v. MUTUAL BENEFIT INSURANCE CO.

A policy of insurance issued by a New Jersey company to a citizen of Virginia, containing no condition for the payment of premiums in any other place than New Jersey, is a contract to be performed in the latter state, and must be governed by its laws.

A policy was issued by a New Jersey company to a citizen of Virginia in 1860. Payment of subsequent premiums was prevented by the war. The insured life terminated in 1863, and notice and proofs of that fact were made to an agent of the company in Kentucky in 1872. *Held*, (1) that the parties were bound to give notice in a reasonable time; (2) that the delay here was unreasonable; (3) that the Acts of Virginia suspending the statutes of limitation in certain cases did not apply to foreign debtors like this company; (4) that the Statute of Limitations must be held to have commenced to run within a reasonable time (six months) after the termination of the war, and the policy not being under seal was barred in six years by the laws of New Jersey and in five by the laws of Virginia, and therefore could not be recovered upon in Kentucky.

APPEAL from Jefferson Court of Common Pleas. Action on a policy of insurance on the life of plaintiff's husband.

October 9th 1860, the Mutual Benefit Life Insurance Company issued to Ann E. Spratley, of Suffolk, Virginia, a life policy for \$5000 upon the life of her husband, Thomas W. Spratley. Before the annual premium for 1861 fell due, the powers of the agent at Suffolk had been revoked in consequence of the civil war. For that reason said annual premium and those subsequently falling due were not paid.

In September 1863, Thos. W. Spratley died at Petersburg, Virginia. In October 1872, Mrs. Spratley, through her agents and attorneys, delivered to K. W. Smith, agent for the insurance company at Louisville, Kentucky, proof of the death of the insured. On the 17th of February 1873 this action was instituted.

Bullitt & Harris, for plaintiff.

Gazlay & Reinecke, for defendant.

The opinion of the court was delivered by

LINDSAY, J.—The company relies on numerous defences, among others, the failure by the assured within reasonable time to present due notice and proof of death. It also pleads and relies on the statutes of limitation. It is in proof that the limitation to actions on life insurance policies not under seal (as is the case with this one), is six years in New Jersey, the domicile of the company, and

five years in the state of Virginia, where appellant insists that all the stipulations of the contract were to be performed. Counsel argue that as by the terms of the policy the money is not due and payable until ninety days after due notice and proof of death, limitation does not begin to run until such notice with proof is given to the company. They attempt to assimilate the contract sued on to notes payable on demand. It seems to us that there is an essential difference between them. In cases of notes payable on demand, the debtor is fully advised as to the existence of his debt, and of his subsisting obligation to pay it. It is within his power to seek his creditor, and discharge himself from liability by paying it. So long as he remains quiet and inactive, it is to be presumed that he consents to the inactivity of the creditor, and that the time when the limitation is to begin to run is postponed by the consent of both the parties to the contract. Not so in cases of life insurance. The company has no certain means of ascertaining when by the death of the insured its liability to pay accrues. To remedy this difficulty, the contract requires the assured to notify the insurer of the happening of this event.

The presumption is conclusive that the parties to the contract intended that this notice should be given as soon as it is reasonably possible to do so. The insurer has the right whilst the witnesses are still alive, and the circumstances still fresh in their memories, to investigate the causes of the death, in order to ascertain whether or not it is liable to pay the insurance. In cases of apparently unreasonable delay, the assured must present a satisfactory explanation therefor, or else the statute should be held to begin to run within a reasonable time after the death.

In this case the prevalence of civil war rendered it impossible to make and present the proof until about the middle of the summer of 1865.

The evidence shows, however, that with reasonable diligence the assured might have been in an attitude to sue by the 1st day of January 1866. The action was therefore barred in Virginia under the statutes of limitation of that state on the 1st day of January 1871. It is claimed, however, that the running of the statute in said state was suspended by legislative enactment.

On the 2d day of March 1866, the Virginia legislature passed a statute providing that the time intervening between the 17th of April 1861, and the enactment of said statute should be excluded

from the computation of time within which it was theretofore necessary to commence any action or proceeding.

By this act the limitation commenced to run on the 2d of March 1866, and the action was barred on the 2d of March 1871.

But it is claimed that the statute was still further suspended by an act passed on the same day, which deprived creditors of the right to enforce the collection of certain of their debts until the 1st day of January 1868, and provided that the time during which said act should remain in force should be excluded from the computation of time within which any action or proceeding was required to be commenced.

Foreign debtors were excluded from the operation of this act. The first section of this act was afterwards continued in force until the 1st day of January 1869. We need not determine whether this amendatory act also continued in force the section of the act of March 2d 1866, suspending during its operation the statutes of limitation.

Appellee was a foreign debtor at the time both the original and amendatory statutes were passed, and therefore was not affected by them.

It may be that the laws of Virginia gave to foreign insurance companies doing business in that state before the war "a sort of local existence," as was held by a bare majority of the Virginia Court of Appeals in the case of the *Manhattan Life Insurance Co. v. Warwick*, 20 Grattan 614.

But, if this be true, it is equally true that the course pursued by Virginia in the war between the states effectually uprooted and destroyed "the sort of local existence" this appellee had in that state. Its domicile was within a state adhering to the federal government, and from the time hostilities commenced between Virginia and the federal government this appellee could not comply with the laws of Virginia, and therefore, without fault upon its part, it lost its *quasi* local habitation in that state, and, as a matter of necessity, assumed towards Virginia and her laws its original character of a foreign corporation.

It was therefore, so far as this record shows, a foreign debtor in March 1866, and in nowise affected by the provisions of the act of the 2d of that month.

But in addition to all this, the policy of insurance was a New Jersey contract, to be performed, so far as the payment of insurance

was concerned, in New Jersey. The company was expelled from Virginia by force, and was under no obligation to send agents to that state after hostilities ceased, either to solicit further business or to put it in the power of Virginia creditors to sue it in the courts of that state.

The action was barred by the laws of New Jersey, and the court below was bound to instruct the jury that it could not therefore be maintained in this state. Wherefore, the instruction to find for the defendant did not prejudice the substantial rights of the appellant.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME COURT OF THE UNITED STATES.¹

SUPREME JUDICIAL COURT OF MAINE.²

SUPREME COURT OF OHIO.³

SUPREME COURT OF PENNSYLVANIA.⁴

ACCRETION. See *Landlord and Tenant*.

ADMIRALTY.

Advances in Foreign Port.—Advances made in a foreign port to equip a vessel, and to procure for her a cargo to a port of destination, are *prima facie* presumed to be made on the credit of the vessel: *Insurance Company v. Baring*, 20 Wall.

They are a lien on the vessel and constitute an insurable interest: *Id*.

Claims not Maritime Liens.—Where claims on the proceeds in the registry of a vessel sold are not maritime liens, the District Court cannot distribute those proceeds in payment of the claims if the owners of the vessel oppose such distribution: *The Lottawanna*, 20 Wall.

A creditor by judgment in a state court, of the owners of the vessel, even though he have a decree *in personam* also in the admiralty against them, cannot seize, or attach, on execution, proceeds of the vessel in the registry of the admiralty: *Id*.

Where an appeal is taken to the Circuit Court from the decree of the District Court in a proceeding *in rem*, the property or its proceeds follow the cause into the former court: *Id*.

ARBITRATION.

Revocation of Agreement to Submit.—A naked power to submit a controversy to arbitration is revocable: *Paist et al. v. Caldwell*, 75 Pa.

An agreement to submit which is in the nature of a contract, whereby

¹ From J. W. Wallace, Esq., Reporter; to appear in vol. 20 of his Reports.

² From Hon. E. B. Smith, Reporter; to appear in 62 Me. Reports.

³ From Hon. M. M. Granger, Reporter; to appear in 24 Ohio St. Reports.

⁴ From P. F. Smith, Esq., Reporter; to appear in 75 Pa. State Reports.